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No. 602

In the Supreme Court of the United States

OCTOBER TERM, 1970

ARNOLD TOURS, INC., ET AL., PETITIONERS

v.

WILLIAM B. CAMP, COMPTROLLER OF THE CURRENCY, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE COMPTROLLER OF THE CURRENCY IN OPPOSITION

ERWIN N. GRISWOLD,
Solicitor General,
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Washington, D.C. 20530.

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1. Petitioners are 42 independent travel agents doing business in Massachusetts. By this action for declaratory and injunctive relief against the respondents Comptroller of the Currency and South Shore National Bank, they seek to invalidate a ruling by the Comptroller that, incidental to their banking services, national banks may provide travel services for their customers.[1] The gravamen of the complaint is that

[1] Paragraph 7475 of the Comptroller's *Manual for National Banks* provides: "Incident to those powers vested in them under 12 U.S.C. 24, national banks may provide travel services for their customers and receive compensation therefor. Such

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the performance of such travel services is not within the authority of national banks, under the National Bank Act of 1864, to exercise "all such incidental powers as shall be necessary to carry on the business of banking." 12 U.S.C. 24, Seventh.

The district court dismissed the action for lack of standing and the court of appeals affirmed. 408 F. 2d 1147. On March 23, 1970, this Court vacated (397 U.S. 315) the judgment of the court of appeals and remanded to that court for further consideration in light of the March 3, 1970 decisions in *Association of Data Processing Service Organizations, Inc.* v. *Camp*, 397 U.S. 150, and *Barlow* v. *Collins*, 397 U.S. 159. On remand, the court of appeals adhered to its prior determination that petitioners lacked standing to maintain the action (Pet. App. 31–34). The court noted that this Court had determined in *Data Processing* and *Barlow* that standing was dependent, *inter alia*, upon a showing that "the interest sought to be protected by the complainant here is arguably within the zone of interests to be protected or regulated by the statute or constitutional guarantee in question." It concluded that this test was not satisfied here.

2. By virtue of this Court's remand, the court below was called upon to apply the "zone of interests" test of standing to the particular circumstances of

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services may include the sale of trip insurance and the rental of automobiles, as agent for a local rental service. In connection therewith, national banks may advertise, develop, and extend such travel services for the purpose of attracting customers to the bank." See ¶ 7376.

this case. The conclusion of that court that the test had not been met by petitioners presents no question of general importance and is correct.

Petitioners do not attempt to assert a legislative purpose underlying the National Bank Act, or more particularly the "incidental powers" clause contained in 12 U.S.C. 24, Seventh, to protect the interests of potential competitors of national banks. Nor could they. The legislative history of the Act dispels any doubt that its enactment in 1864 (13 Stat. 101) was for the sole purpose of creating a strong national banking system, initially to assist in the alleviation of the financial crisis occasioned by the Civil War. See Special Message of President Lincoln, Sen. Jour., 37th Cong., 3d Sess., pp. 121–122, Annual Report, Secretary of the Treasury, 38th Cong., 1st Sess., pp. 19–21, reprinted in Federal Banking Laws and Reports (1780–1912), Senate Committee on Banking and Currency, 88th Cong., 1st Sess., pp. 305–306, 345–347.

Petitioners now point to Section 4 of the Bank Service Corporation Act of 1962, 12 U.S.C. 1864, which provides that "[n]o bank service corporation may engage in any activity other than the performance of bank services for banks." But, as the court of appeals observed (Pet. App. 33), there is nothing to indicate that in enacting Section 4 Congress was concerned with the competitive interests of travel agents or in general business competitors of banking institutions.

In these circumstances, petitioners' situation is markedly different from that of the data processors

and tenant farmers held to have standing in *Data Processing* and *Barlow*, respectively. Unlike the travel agents, the data processors could find in Section 4 of the Bank Service Corporation Act, some manifestation of legislative concern for their competitive position. See *The Wingate Corporation* v. *Industrial National Bank*, 408 F. 2d 1147, 1152 (C.A. 1). Similarly, in *Barlow*, this Court found "[i]mplicit in the statutory provisions [there involved] * * * a congressional intent that the Secretary protect the interests of tenant farmers"; indeed, the Court observed, "[b]oth of the relevant statutes expressly enjoin the Secretary to do so." 397 U.S. at 164.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

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Solicitor General.

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